IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8178 of 1990

With

SPECIAL CIVIL APPLICATION No. 8164 of 1988

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GORDHANBHAI A PATEL - Petitioner(s)
Versus
STATE OF GUJARAT & 4 - Respondent(s)

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Appearance :
MR PJ VYAS for Petitioner(s) : 1,
MR LR PUJARI, AGP for Respondent(s) : 1,4 - 5.
RULE SERVED for Respondent(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 13/12/2006

COMMON ORAL JUDGMENT

1. This judgment shall dispose of Special Civil Application No. 8178 of 1990 and Special Civil Application No. 8164 of 1988.
2. Heard the learned counsel for the parties.
3. By these petitions under Articles 226/227 of the Constitution of India, the petitioner seeks to challenge the final statement issued under Section 10[3] of the Urban Land [Ceiling & Regulation] Act, 1976 and the order dated 6th December, 1985 passed by the respondent no.1 and the order dated 24th March, 1988 passed by the respondent no.2. It is submitted by the petitioner that so long as his application under Section 20 of the Act was pending consideration, the government had no right or authority to issue the final statement and in accordance with judicial propriety, in view of a Division Bench judgment of this Court, the State was required not to proceed beyond Section 10[2] of the Act.
4. Short facts necessary for disposal of the present matters are that, the present petitioner was holding 4073.58 sq.mts. land, permission under Section 21 was granted in relation to

1249.52 sq.mts and almost about 718.00 sq.mts. land was sold. The Competent Authority, vide its order declared that the petitioner was in possession of 606.05 sq.mts., the permission under Section 21 was granted on 15.6.80/25.7.80 relating to 1249.52 sq.mts. Thereafter, the Competent Authority issued a notice-cum-show cause notice dated 16.9.85 as to why permission granted under Section 21 be not recalled and cancelled.

5. By order dated 6.12.85, the Competent Authority cancelled the said permission and directed that provisions of Chapter-III of the Act shall now be applicable and the land admeasuring 1249.52 sq.mts. would be included within the holding of the petitioner.

6. The order dated 6.12.85 cancelling the permission earlier granted under Section 21 of the Act was challenged by the petitioner in Appeal No. Rajkot-8 of 1986. The said appeal was dismissed on 24.3.88 and the interim order was also vacated. Thereafter, on 2.1.89 [it could be 2.2.89], the Competent Authority issued the

final statement. The final statement was again challenged by the petitioner in Appeal No. Rajkot-35 of 1989 which was dismissed by the Tribunal on 15.11.89. The petitioner had made an application under Section 20 seeking marginal exemption for 134.85 sq.mts. land of plot no. 6. The said application was rejected by the government by order dated 19.6.90, but however, the government issued final notification under Section 10[3] of the Act on 12.4.90. Thereafter, the petitioner was dispossessed of 1855.57 sq.mts. land. The order dated 15.11.89 passed by the Tribunal is under challenge in Special Civil Application No. 8178 of 1990.

7. It is to be noted that the petitioner's son Ajitbhai Gordhanbhai filed an appeal before the Tribunal under Section 33 of the Act challenging the first order dated 15.9.84. The Tribunal vide its order dated 16.11.94 held that the petitioner and his son each was entitled to retain 1 unit of 1500 sq.mts. and in such case, there would be no excess land. The order passed by the Tribunal was challenged by the State

Government in Special Civil Application No. 249 of 1996. The High Court, by its order dated 21.9.98 was pleased to set aside the judgment of the Tribunal and remand the matter back to the Tribunal with the direction to hear and decide the matter afresh and in accordance with law.

8. Shri Vyas, learned counsel for the petitioner submits that the appeal filed by petitioner's son Ajitbhai Gordhanbhai has been disposed of as abated and as on date it is not pending.

9. The submission now is that the Act came to be repealed with effect from 30.3.99 and as the petitioner's application under Section 20 of the Act was pending consideration, the State could not proceed beyond the stage of Section 10[2] of the Act and could not issue final statement under Section 10[3] of the Act. Shri Vyas, learned counsel for the petitioner places his strong reliance upon the Division Bench judgment of this Court in the matter of Savitaben Ramanbhai Patel Vs. State of Gujarat & Ors. [1999 [1] GLR 860].

10. The said judgment places its reliance upon the full Bench judgment of this Court and directed that in case on hands, the process under the Act prosecuted beyond the stage of Section 10[2] of the Act would not survive.

11. In the present matter, it is to be seen that the petitioner is not seeking exemption for the entire land which was declared surplus. According to his own submission, he made application under Section 20 of the Act seeking marginal exemption for 134.85 sq.mts. only. In such case, it would not be open to the petitioner to argue that though he seeks exemption for small fragment of the land, proceedings in relation to rest of the area should also be fore-stalled. The proceedings in relation to the application under consideration would only survive and not for the rest of the area. Out of the total area of 1855.57 sq. mts. the petitioner is seeking exemption for 134.85 sq.mts. only. The said judgment of the Division Bench is not an authority to say that if the application is for marginal exemption,

then too, the proceedings under Section 10[3] cannot be taken for balance area. If the petitioner's application filed under Section 20 is to be allowed, it would be only for 134.85 sq.mts. area only.

12. Learned counsel for the petitioner submits that the petitioner would be satisfied if the matter pertaining to 134.85 sq.mts. is remanded back to the Competent Authority for issuing a fresh order-cum-declaration-cum notification that the petitioner is entitled to retain 134.85 sq.mts land well described in his application filed under Section 20 of the Act.

13. In view of the discussion aforesaid, the prayer made by the learned counsel for the petitioner is just.

14. It is accordingly ordered that on submission of copy of this judgment, the Competent Authority shall either amend the earlier notification issued under Section 10[3] of the Act or in the alternative, shall issue supplementary notification that area of 134.85 sq.mts well described in his application filed under

Section 20 of the Act would not vest in the government, the petitioner would be entitled to retain possession and if the petitioner has been dispossessed from the said land, possession shall be restored to him.

15. Both the petitions are disposed of. Rule is discharged in each of the petition. No costs. Interim relief, if any, is vacated.

[R.S. GARG, J.]

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